

PT 98-7

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

**VETERANS OF FOREIGN WARS
LANOO POST 1303
Applicant**

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

Docket # 95-81-68

Parcel Index # SRI 4815

**Barbara S. Rowe
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Marvin Andich, attorney for Veterans of Foreign Wars Lanoo Post 1303.

Synopsis:

The hearing in this matter was held at the Illinois Department of Revenue, (hereinafter referred to as the "Department), to determine whether or not Rock Island County Parcel Index No. SRI 4815 qualified for a property tax exemption during the 1995 assessment year.

Paul Hymes, Commander of Veteran's of Foreign War Lanoo Post 1303, (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant was the owner of the parcel during the 1995 assessment year; secondly, whether the applicant is a veteran's organization; and lastly, whether the parcel was used by the applicant for charitable, civic and patriotic purposes during the 1995 assessment year. Following the submission of all the evidence and a review of the record, it is determined that the applicant owned the subject parcel in 1995. It is also

determined that the applicant is a veteran's organization. Finally, it is determined that the applicant did not use the parcel for civic, patriotic and charitable purposes during the 1995 assessment year. It is therefore recommended that Rock Island Parcel Index Number SRI 4815 remain on the tax rolls for 1995 and be assessed to the applicant.

Findings of Fact:

1. The jurisdiction and position of the Department, that Rock Island Parcel Index Number SRI 4815 did not qualify for a property tax exemption for the 1995 assessment year was established by the admission into evidence of Department's Exhibits numbered 1 through 4. (Tr. p. 12)

2. On October 5, 1995, the Department received a property tax exemption application from the Rock Island Board of Review for Permanent Parcel Index Number SRI 4815. The applicant had submitted the request and the board recommended granting the exemption for the 1995 assessment year. (Dept. Grp. Ex. No. 1)

3. On December 29, 1995, the Department denied the requested exemption application finding that the property was not in exempt use. (Dept. Ex. No. 2)

4. The applicant timely protested the denial of the exemption request and asked for a hearing on the matter. (Dept. Ex. No. 3)

5. The hearing held at the Department's offices in Springfield, Illinois, on August 8, 1997, was pursuant to that request. (Dept. Ex. No. 4)

6. The applicant was incorporated under the general not for profit corporation act of the state of Illinois on May 31, 1966. The article verification submitted by the applicant contained only the cover sheet. (Dept. Grp. Ex. No. 1 p. 19)

7. The applicant was organized under "An Act To Incorporate the Veterans of Foreign Wars of the United States," U.S.C.A. Title 36, Chapter 7A, Sections 111 to 120. The purpose of the corporation, according to the congressional charter is:

That the purpose of this corporation shall be fraternal, patriotic, historical, and educational; to preserve and strengthen comradeship among its members; to assist worthy comrades; to perpetuate the memory and history of our dead, and to assist their widows and orphans; to maintain true allegiance to the Government of the United States of America, and fidelity to its Constitution and laws; to foster true patriotism; to maintain and extend the institutions of American freedom, and to preserve and defend the United States from all her enemies, whomsoever. (Petitioner's Ex. A)

8. According to the by-laws of the applicant, its purpose is:

to contribute and participate in charitable, educational and patriotic projects, to provide and maintain educational, patriotic and recreational facilities for charitable, educational and patriotic organizations, including members of applicant's post of the Veteran's of Foreign Wars of the United States, its Auxiliary, subsidiary, allied and affiliated organizations and to participate in various fund-raising activities for organized charities and donate the use of its facilities and funds to deserving and recognized charities; not, however, including the care of neglected or dependent children. (Dept. Grp. Ex. 1 p. 8)

9. The applicant acquired the parcel at issue by a warranty deed dated January 20, 1993. (Dept. Grp. Ex. No. 1 p. 3)

10. Rock Island Parcel Index Number SRI 4815 is commonly known as 3715 Ninth Street, Rock Island, Illinois. (Dept. Grp. Ex. No. 1 p. 1; Tr. p. 13)

11. The building on the parcel is used for the applicant's veterans meetings, senior citizen activities, township, and city activities. Primarily, the building is used as a post meeting house. (Dept. Grp. Ex. No. 1 p. 1; Tr. p. 14)

12. The applicant has a rental policy for the use of the building on a daily or several hour basis. If an organization wishes to use the applicant's ballroom, the lease fee is \$300.00. The rental fee for the smaller room is \$150.00. The applicant, on an average of two or three times a month, grants the use of the facilities without charge. The applicant regards that use as a charitable or civic contribution. (Tr. p. 20; Dept. Grp. Ex. No. 1 pp. 15-17)

13. Often the applicant gets letters of thanks from entities that use the applicant's building and groups who receive contributions from the applicant. (Applicant's Grp. Ex. D)

14. The applicant operates on a fiscal year that extends from July 1 to June 30. (Tr. p. 16)

15. For the period of July 1, 1994, to June 30, 1995, the federal income tax form 990 of the applicant shows gross receipts of \$415,017.00. The gross receipts are comprised of: A) business income of \$392,686.00; B) dues and assessments from members of \$5,415.00; C) gifts, grants and contributions received in the amount of \$14,756.00; and D) other income of \$2,160.00.¹ (Dept. Grp. Ex. No. 1 p. 4; Tr. pp. 23-24)

16. For the same period, the applicant had disbursements of either \$371,281.00, as testified to by the applicant or \$386,665.00 as shown on the federal income tax form 990. The disbursements on the form were divided into the following categories: A) cost of goods sold were \$170,883.00; B) exempt purpose disbursements were \$27,693.00; and C) operation expenses were \$188,089.00.² (Dept. Grp. Ex. No. 1 p. 5; Tr. p. 24)

¹. Included in that income were: A) Business Income consisting of \$166,487.00-gross bingo receipts; \$11,385.00-rental income; interest received-\$3,012.00; bar and food sales-\$85,792.00; raffle, tickets and board sales-\$110,157.00; vending machines-\$1,931.00; affairs/functions-\$409.00; sales of supplies-\$1,098.00; and Miscellaneous-\$12,445.00, B) Dues and Assessments including dues collected-\$4,175.00; life membership receipts-\$1,240.00, C) Gifts, Grants and Contributions received including poppy receipts-\$1,524.00; National Home-\$216.00; youth activities-\$620.00; Sons of VFW-\$1,232.00; color guard and ritual team-\$335.00; general fund including building fund requests-\$10,829.00, and D) Other Income and Receipts for reimbursement to plaques and landscaping-\$2,160.00. (Dept Grp. Ex. No. 1 p. 4; Tr. pp 23-24)

². Included in disbursements on "Applicant's Form 990 - Tax Year 1994 ... for the period July 1, 1994 to June 30, 1995" were: A) Cost of Goods Sold including bar and food-\$33,808.00; bar supplies-\$2,119.00; raffle and games-\$5,422.00; bingo supplies-\$9,196.00; bingo prizes-\$114,750.00; affairs and functions-\$836.00; VFW supplies-\$4,752.00, B) Exempt purpose disbursements consisting of per capita tax-\$5,405.00; application fees-\$64.00; life memberships-\$1,240.00; miscellaneous-\$5,600.00; poppy (relief) fund-\$2,637.00; National Home-\$250.00; Voice of Democracy-\$305.00; sons of VFW & youth activities-\$4,438.00; color guard flag and ritual team-\$236.00; community services-\$7,518.00, C) Operation expenses included salaries-\$31,175.00; rents-\$13,968.00; utilities-\$13,023.00; interest-\$40,771.00; licenses-\$2,477.00; State bingo taxes-\$8,006.00; other taxes-\$57,636.00; insurance-\$8,604.00; repairs and maintenance-\$3,919.00; advertising-\$1,594.00; professional fees-\$1,719.00; miscellaneous-\$2,682.00; supplies-\$1,262.00; and bingo cash shortages-\$1,253.00, for a total of all entries on the page of \$ 386,665.00. (Dept. Grp. Ex. No. 1 p. 5) The applicant testified that its total operation expenses for that period were \$364,572.00, membership expenses were \$6,709.00, for total expenses of \$371,281.00. (Tr. p. 24)

17. Applicant's net income for that period was either \$28,352.00 or \$43,736.00, but not \$34,736.00 as testified to by the witness.³ (Dept. Grp. Ex. No. 1 pp. 4-6; Tr. p. 24)

18. Of the net income, the applicant made charitable contributions of \$15,384.00. This amounted to 52% of all available funds, according to the witness.⁴ (Tr. p. 19)

19. For the applicant's fiscal year of 1995-1996, business income was \$368,593.00, membership dues income was \$6,682.00, and voluntary cash contributions were \$22,080.00 for total receipts of \$397,355.00.⁵ (Tr. p. 17)

20. For the same period, operating expenses were \$365,525.00, including \$117,000.00 for bingo and pull tabs. Additional membership expenses of \$5,753.00 made the total expense amount \$371,278.00. (Tr. pp. 17-18)

21. After deducting total business income from the receipts, the applicant had available net income of \$26,077.00. Of that amount, the applicant testified that \$17,888.00, or 69% of available funds were donated as contributions, gifts, and awards for community and charitable activities. (Tr. p. 19)

22. The applicant is exempt from the payment of federal income taxes, as a veteran's organization, pursuant to a 501(c)(19) designation issued by the Internal Revenue Service on October 8, 1991. (Petitioners Ex. B)

³. \$415,017.00 minus \$386,665.00 equals \$28,352.00; \$415,017.00 minus \$371,281.00 equals \$43,736.00. I do realize that the witness might have transposed the numbers in his testimony

4. I cannot determine how the applicant arrived at the 52% figure testified to. I divided \$15,384.00 by \$28,352.00 which is 54%. \$15,384.00 divided by \$34,736.00 equals 44%. \$15,384.00 divided by \$43,736 equals 35%. In his testimony, the applicant listed organizations such as the pot beef fund, their National Home, Voice of Democracy, color guards, flags and ritual teams as examples of organizations which they designate their contributions to as charitable. As the percentage and organizations are not substantiated in the record, I find the percentage and characterization of the recipients questionable.

⁵. The applicant did not submit a copy of the form 990 for the 1995-1996 fiscal year. Therefore the figures that were testified to were not substantiated.

23. The applicant operates a canteen on the premises. The canteen is open strictly to members of the organization and their guests. (Tr. p. 31)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to the authority granted by the Constitution, the Legislature has enacted statutory exemptions from property tax. The provision at issue is found at 35 **ILCS** 200/15-145 and states:

All property of veterans' organizations used exclusively for charitable, patriotic and civic purposes is exempt.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

In the case of North Shore Post No. 21 v. Korzen, 38 Ill.2d 231 (1967),⁶ the Supreme Court of Illinois held that the predecessor statute to 35 **ILCS** 200/15-145 was constitutional and

⁶. At the time North Shore Post No. 21 was decided, the exemption for veteran's organizations was found at Ill. Rev. Stat. chap. 120, para. 500.18 (1963). The statute exempted:

All property of veterans' organizations used exclusively for charitable, patriotic and civic purposes.

that the provision granting an exemption to a veteran's organization required the organization's utilization of the property must encompass all three of the statutorily required uses: civic, patriotic, and charitable. At page 234, the Court stated the proposition as follows:

Therefore, in order for property of veterans' organizations to be exempted from taxation it must be shown not only that the property was used exclusively for charitable purposes but also that such use was patriotic and civic. (Emphasis added)

The Court went on to hold that the North Shore's usage of the property for its meetings, wedding receptions, meetings of various other groups, and the bar maintained on the premises primarily for members, necessitated a finding by the Court that the primary use of the property was not exempt. I find very little difference between the usage of the North Shore post and applicant's post. They both used the properties for meetings and receptions for various entities.. Both had a bar for members.

Regarding the use of the premises for bingo, the Illinois Supreme Court has held that use is not charitable. Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956) In the case at issue, the major source of applicant's funds is from bingo and pull tabs. I find that bingo as a source of income is not income from public and private charities which is a suggested requirement under usage criteria established in the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968). In Methodist Old Peoples Home, the Illinois Supreme Court established six non-exclusive guidelines to be used in determining whether or not an organization is charitable and its use of the property is charitable. Those six guidelines are as follows:

- (1) The benefits derived are for an indefinite number of persons;
- (2) The organization has no capital, capital stock or shareholders, and does not profit from the enterprise;
- (3) Funds are derived mainly from private and public charity, and are held in trust for the objectives and purposes expressed in its charter;
- (4) Charity is dispensed to all who need and apply for it;
- (5) No obstacles are placed in the way of those seeking the benefits; and

(6) The primary use of the property is for charitable purposes.

As one of the criteria for the applicant's use of the property in order to qualify for a property tax exemption as a veteran's organization is that the property be used for charitable purposes, the above guidelines should be examined. Although the six criteria are not exhaustive nor do all have to be met, I find that the applicant's use of the property is not charitable. The applicant's use does not satisfy criteria number 2. The applicant does profit from the enterprise. I also find criteria number 3 is not satisfied because the funds are not derived mainly from public and private charity. I also find that the applicant has not established that they satisfy criteria numbered 1, 4, 5, and 6 of Methodist Old Peoples Home.

In actions by corporations to have real estate declared exempt from taxation for certain years on the grounds that it is a charitable corporation, the Illinois Supreme Court has held that the certificate of incorporation is the controlling evidence of the purpose for which the organization was created. Oak Park Club v. Lindheimer, 369 Ill. 462 (1938) The purpose of the Veterans of Foreign Wars, as stated in the congressional charter, is fraternal, patriotic, historical and educational. The word charitable is not mentioned.

There is no dispute that the applicant's endeavors are certainly commendable and benefit a great number of people in the community. However, that is not the test that has been established in order for a veteran's organization to be granted a property tax exemption. The Court has stated that the use must be civic, patriotic, and charitable.

The applicant did not address the question of what was the civic use of the property during the 1995 assessment year. The Illinois courts have not defined the term "civic." However, the federal income tax act contains a provision for exemptions for civic leagues found at § 501(c)(4). (26 U.S.C.A. § 501(c)(4)) A court hearing cases regarding that exemption has defined civic to mean "proper to, of, or pertaining to citizens, city, borough, municipality, or citizenship." C.I.R. v. Lake Forest, Inc., 350 F.2d 814, 817 (1962).

The applicant uses the property for social purposes when it conducts the meetings, dinners, and other activities it holds on the premises. At the hearing and prior to it, the applicant

did not address the patriotic use of the building in question during 1995. The applicant has failed to show that the activities it conducted on the premises during 1995 satisfy the three-prong test of charitable, civic, and patriotic usage that the statute requires.

I find that North Shore Post No. 21 is the controlling case law regarding the statutory language at issue and that the applicant has failed its burden of proof to qualify for exemption. I therefore recommend that Rock Island Parcel Index Number SRI 4815 remain on the tax rolls for the 1995 assessment year and be charged to the applicant.

Barbara S. Rowe
Administrative Law Judge

January 6, 1998